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Filing date: **11/04/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92050789
Party	Plaintiff Nartron Corporation
Correspondence Address	Hope V. Shovein Brooks Kushman P.C. 1000 Town Center, 22nd Floor Southfield, MI 48075 UNITED STATES rtuttle@brookskushman.com, hshovein@brookskushman.com
Submission	Other Motions/Papers
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Signature	/hope v shovein/
Date	11/04/2009
Attachments	BIS 56(f) Motion.pdf (7 pages)(80769 bytes) Signed RCJT 56(f) Decl w Exhibits.pdf (22 pages)(483509 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NARTRON CORPORATION

Petitioner,

v.

Cancellation No. 92050789

**HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,**

Respondent.

**PETITIONER'S BRIEF IN SUPPORT OF
ITS MOTION UNDER RULE 56(f) FOR DISCOVERY**

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Pursuant to Fed. R. Civ. P. 56(f), Petitioner Nartron Corporation (“Nartron”) respectfully requests that the Board permit discovery reasonably directed to obtaining facts essential to oppose Hewlett-Packard Development Company, L.P.’s (“HP”) Motion for Summary Judgment. In support hereof, Nartron submits the Declaration of Robert C.J. Tuttle (“RCJT 56(f) Decl.”) and Exhibits, filed herewith.

On April 9, 2009, Nartron petitioned to cancel HP’s April 7, 2009 Registration No. 3,600,880 for TOUCHSMART for “personal computers, computer hardware, computer monitors, computer display screens” in International Class 9, based on a §2(d) claim of likelihood of confusion with Nartron’s SMART TOUCH for “electronic proximity sensors and switching devices” in International Class 9.

HP answered the Petition to Cancel on June 22, 2009, following a stipulated request for extension of time in which to answer.

Nartron served its Initial Disclosures on July 22, 2009 and its First Interrogatories and Rule 34 Requests on August 27, 2009.

HP served its Initial Disclosures on September 9, 2009. Initial Disclosures were due August 21, 2009, but HP’s counsel, Jeffrey E. Faucette, requested an extension of time to serve HP’s Initial Disclosures until September 9, 2009, as “HP is pretty much a ghost town during the month of August.” Nartron agreed to the requested extension.

On September 30, 2009, just one (1) day before HP’s deadline for responding to Nartron’s August 27, 2009 discovery requests, HP filed the subject Motion for Summary Judgment concurrently with a Motion to Suspend Proceedings.

The Board has not issued an order suspending proceedings. As explained in Nartron's pending Motion to Compel, HP's obligation to respond to discovery requests should not be deemed suspended. HP should not be permitted to curtail its discovery obligations by making a premature motion for summary judgment.

For the foregoing reasons, Nartron respectfully requests that the Board permit discovery reasonably directed to obtaining facts essential to oppose HP's premature motion.

II. DISCUSSION

A. Legal Standard

Fed. R. Civ. P. 56(f) provides a mechanism for postponing the determination of summary judgment pending completion of discovery, providing the Board the authority to deny, outright, a motion for summary judgment as premature. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2554-55, 91 L.Ed.2d 265 (1986) ("any potential problem with such premature motions [for summary judgment] can be adequately dealt with under Rule 56(f)"); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986) (Under Rule 56(f), "summary judgment [must] be refused where the nonmoving party has not had the opportunity to discover information that is essential to [its] opposition"); and *Sweats Fashions, Inc., v. Pannill Knitting Co.*, 833 F.2d 1560, 1567, 4 USPQ2d 1793, 1799 (Fed.Cir.1987) ("A party may not simply assert in its brief that discovery was necessary and thereby overturn summary judgment when it failed to comply with the requirement of Rule 56(f) to set out reasons for the need for discovery in an affidavit").

Pursuant to Rule 56(f), summary judgment must be refused “where the nonmoving party has not had the opportunity to discover information that is essential to his opposition.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5 (1986). “Generally where a party has had no previous opportunity to develop evidence and the evidence is crucial to material issues in the case, discovery should be allowed before the trial court rules on a motion for summary judgment.” *Program Eng'g, Inc. v. Triangle Publications, Inc.*, 634 F.2d 1188, 1193 (9th Cir.1980). It has long been held that a party should be afforded reasonable access to potentially favorable information prior to the granting of summary judgment, because on summary judgment *all inferences* to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing summary judgment. *Texas Partners v. Conrock Co.*, 685 F.2d 1116, 1119 (9th Cir.1982).

In the instant proceeding, the Board should permit Nartron to obtain discovery necessary to respond to HP’s motion. Indeed, the Board has a duty under Rule 56(f) to ensure that the parties are allowed reasonable opportunity to make the record complete before ruling on a motion for summary judgment. *See Metabolife Int'l, Inc. v. Wornick*, 264 F.3d 832, 846 (9th Cir.2001) (“Although Rule 56(f) facially gives judges the discretion to disallow discovery when the non-moving party cannot yet submit evidence supporting its opposition, the Supreme Court has restated the rule as requiring, rather than merely permitting, discovery ‘where the non-moving party has not had the opportunity to discover information that is essential to its opposition’”) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n. 5, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)); *Wichita Falls Office Assoc. v. Banc One Corp.*, 978 F.2d 915, 919 n. 4 (5th Cir.1992) (Rule 56(f)-based “continuance of a motion for summary judgment for purposes

of discovery should be granted *almost as a matter of course* unless the non-moving party has not diligently pursued discovery of the evidence”) (emphasis added) (citations omitted); *Berkeley v. Home Ins. Co.*, 68 F.3d 1409, 1414 (D.C.Cir.1995) (describing “the usual generous approach toward granting Rule 56(f) motions”).

B. HP’s Outstanding Discovery Responses are Necessary for Nartron to Fully Respond to HP’s Motion for Summary Judgment

The principal issue in this cancellation proceeding is likelihood of confusion under §2(d). In determining whether there is any genuine issue of material fact regarding likelihood of confusion, the Board must consider the factors set forth in *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). Nartron sought to conduct discovery on all *DuPont* factors, including HP’s intent in selecting TOUCHSMART.

The discovery Nartron chases from HP is essential for Nartron to oppose conclusions reached in HP’s motion for summary judgment. However, as set forth in Nartron’s Response to HP’s Motion to Suspend and Nartron’s Motion to Compel Discovery Responses, HP refuses to respond to outstanding discovery requests. RCJT 56(f) Decl. ¶ 5.

HP’s motion for summary judgment fails to consider or properly analyze a number of relevant *DuPont* factors, including the similarity of the goods, the similarity of trade channels, and evidence of record regarding HP’s use of TOUCHSMART. The sum total of HP’s motion is based on attorney argument. Furthermore, HP’s motion fails to address Paragraph 9 and Exhibit 2 to the Petition to Cancel, which indicate that HP’s use of TOUCHSMART in connection with a computer monitor and display screens is identical to Nartron’s use of SMART TOUCH for electronic sensors.

Nartron will seek additional discovery of HP on matters targeting the *DuPont* factors, including a Rule 30(b)(6) deposition of Respondent HP on such factors. RCJT 56(f) Decl. ¶ 6. Nartron will also seek a discovery deposition of Jean Newmann, Marcom Programs Manager II, identified by HP in its Initial Disclosures as a person likely to have discoverable information on the claims and defenses in this proceeding. RCJT 56(f) Decl. ¶ 7. Such discovery is needed to present facts essential to Nartron's opposition to HP's pending motion for summary judgment. RCJT 56(f) Decl. ¶ 8.

Nartron respectfully suggests that it would be unjust to allow HP to avoid its obligation to respond to discovery requests served a month before the motion for summary judgment was filed. The discovery sought is specifically intended to address the *DuPont* factors, which the Board will consider in deciding this Cancellation Proceeding.

III. CONCLUSION

For the foregoing reasons, Nartron asks that the Board permit discovery reasonably directed to obtaining facts essential to oppose HP's Motion for Summary Judgment.

Respectfully submitted,

BROOKS KUSHMAN P.C.

By: 

ROBERT C.J. TUTTLE
HOPE V. SHOVEIN
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075

Attorneys for Petitioner

Dated: November 4, 2009

CERTIFICATE OF SERVICE

I certify that a true and complete copy of:

**PETITIONER'S BRIEF IN SUPPORT OF
ITS MOTION UNDER RULE 56(f) FOR DISCOVERY**

has been served on November 4, 2009 by:

___ delivering

✓ mailing (via First-Class mail)

a copy to:

Jeffrey E. Faucette
Diana D. Digennaro
HOWARD, RICE, NEMEROVSKI,
CANADY, FALK & RABKIN
Three Embarcadero Center
Seventh Floor
San Francisco, CA 94111

Attorneys for Respondent



Hope V. Shovein

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NARTRON CORPORATION

Petitioner,

v.

Cancellation No. 92050789

**HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,**

Respondent.

**DECLARATION OF ROBERT C. J. TUTTLE
PURSUANT TO FED.R.CIV.P. 56(f)**

ROBERT C. J. TUTTLE makes the following declaration on personal knowledge, except where indicated to be on information and belief, and states that if called as a witness to testify at trial he is competent to testify as follows:

1. I am counsel for petitioner Nartron Corporation in this cancellation proceeding.

2. The principal issue in this cancellation proceeding is likelihood of confusion under §2(d), *i.e.*, whether Nartron's SMART TOUCH of Reg. No. 1,681,891, for "'electronic proximity sensors and switching devices" is confusingly similar to Hewlett-Packard Development Company, L.P.'s TOUCHSMART of Reg. No. 3,600,880, for "personal computers, computer hardware, computer monitors, computer display screens."

3. The §2(d) analysis requires investigation and discovery of the thirteen factors of *In re E.I. DeNemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973).

4. On August 27, 2009, Nartron served HP with its first sets of interrogatories and Rule 34 requests. Exhibits A and B.

5. As set forth in Nartron's Response to HP's Motion to Suspend and Nartron's Motion to Compel Discovery Responses, HP refuses to respond to outstanding discovery requests.

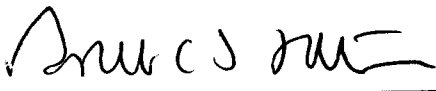
6. Nartron will seek additional discovery of HP on matters targeting the *DuPont* factors, including a Rule 30(b)(6) deposition of Respondent HP on such factors.

7. Nartron will also seek a discovery deposition of Jean Newmann, Marcom Programs Manager II, identified by HP in its Initial Disclosures as a person likely to have discoverable information on the claims and defenses in this proceeding.

8. This discovery is needed to present facts essential to Nartron's opposition to HP's pending motion for summary judgment.

I hereby declare under penalty of perjury the foregoing is true and correct.

Dated: November 4, 2009



ROBERT C. J. TUTTLE

EXHIBIT A

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NARTRON CORPORATION

Petitioner,

v.

Cancellation No. 92050789

**HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,**

Respondent.

**PETITIONER'S FIRST SET OF
INTERROGATORIES TO RESPONDENT**

Petitioner, Nartron Corporation ("Petitioner" or "Nartron"), submits the following Interrogatories to Hewlett-Packard Development Company, L.P. ("Respondent"), in accordance with Fed. R. Civ. P. 33 and Rule 2.120 of the Trademark Rules of Practice. Applicant requests that Opposer serve upon Applicant sworn answers to these Interrogatories within thirty (30) days of service, by delivering the answers to Brooks Kushman P.C., 1000 Town Center, 22nd Floor, Southfield, Michigan 48075. These Interrogatories are intended to be continuing in nature and any information that may be discovered subsequent to the service by Opposer of its responses should be brought to Applicant's attention through supplemental answers within a reasonable time following such discovery.

For the convenience of the Board and the parties, Applicant requests that each Interrogatory be quoted in full immediately preceding the response.

CLAIMS OF PRIVILEGE

If any information responsive to any of the following Interrogatories is withheld on the basis of privilege and/or work-product, the following information is requested with respect to any such refusal: (1) the privilege and/or work-product rule of law being relied upon; (2) the date the document was created; (3) the identity of the person or persons who created the document; (4) the identity of the present custodian; (5) the addressee(s) and all other recipients of the document; (6) the subject matter of the document; and (7) the location of the document.

DEFINITION OF TERMS

These Interrogatories are subject to the following definitions:

1. The term "person" or "individual" includes, but is not limited to, any natural person, corporation, partnership, sole proprietorship, or any other business or legal entity, or any employee, agent, or representative of the foregoing.
2. The term "identify," when referring to a person, means state the full name, last known home and business address, employer, and job title of such person.
3. The term "identify," when referring to a document, means state the general nature or type, the general subject matter, title, number of pages, date, author or originator, addressee or recipient, copy recipients, present depository or depositories, name and address of any person(s) having custody, and any other necessary basis for identification of such document. If not provided contemporaneously with the answer, set forth all substantive portions or terms of the document.
4. The term "Petitioner" refers to Nartron Corporation, the Petitioner in this action, its predecessor or successor corporations, and any of its subsidiaries, divisions, affiliates, foreign affiliates and present and former agents, employees, directors, officers, trustees, attorneys, representatives, research and development personnel, and any other person or entity acting in concert

with Petitioner or on behalf of Petitioner.

5. The terms “you,” “your” or “Respondent” refers to Hewlett-Packard Development Company, L.P. , either individually or in combination, as well their predecessor or successor corporations, and any of its subsidiaries, divisions, affiliates, and present and former agents, employees, directors, officers, trustees, attorneys, representatives, research and development personnel, and any other person or entity acting in concert with Respondent or on behalf of Respondent.

6. Whenever the Interrogatories refer to “Petitioner’s Mark,” they refer to the SMART TOUCH trademark identified in Registration No. 1,681,891.

7. Whenever the Interrogatories refer to “Respondent’s Mark,” they refer to the TOUCHSMART trademark identified in Registration No. 3,600,880.

8. The term “and” includes the term “or”, and the term “or” includes the term “and.”

9. The term “documents” refers to the broadest definition of document under the Federal Rules of Civil Procedure, including drawings, specification, memorandums, and information in computer-readable formats and stored on computer media including but not limited to mass storage devices such as floppy diskettes, hard disks, and also includes e-mail and other documents stored on computer media.

10. The singular of any word includes the plural and the plural of any word includes the singular.

INTERROGATORIES

INTERROGATORY NO. 1.

Identify by name, title, and business address, persons knowledgeable of Respondent's use of TOUCHSMART for *each* of the goods recited in U.S. Registration No. 3,600,880, as of the claimed date of first use, *i.e.*, January 29, 2007.

RESPONSE:

INTERROGATORY NO. 2.

State in factual detail the relationship(s) between and among: (i) Respondent Hewlett Packard Development Company, L.P., (ii) HPQ Holdings, LLC, and (iii) Hewlett Packard Co., including:

- (a) business relationship(s),
- (b) licensor-licensee relationship(s) (if any),
- (c) parent-subsidary relationship(s) , and
- (d) common management and control.

RESPONSE:

INTERROGATORY NO. 3.

Identify by name, title, and business address, persons knowledgeable of the plans of Respondent for marketing the TOUCHSMART goods of U.S. Reg. No. 3,600,880.

RESPONSE:

INTERROGATORY NO. 4.

State Respondent's position on *duPont* Factor No. 1, viz:

The similarity or dissimilarity of the marks [SMART TOUCH and TOUCHSMART] in their entireties as to appearance, sound, connotation and commercial impression.

RESPONSE:

INTERROGATORY NO. 5.

State Respondent's position on *duPont* Factor No. 2, viz:

The similarity or dissimilarity in nature of the goods and goods as described in an application or registration or in connection with which a prior mark is in use.

RESPONSE:

INTERROGATORY NO. 6.

State Respondent's position on *duPont* Factor No. 3, viz:

The similarity or dissimilarity of established, likely-to-continue trade channels.

RESPONSE:

INTERROGATORY NO. 7.

State Respondent's position on *duPont* Factor No. 6, viz:

The number and nature of similar marks in use on similar goods.

RESPONSE:

INTERROGATORY NO. 8.

State Respondent's position on *duPont* Factor No. 11, viz:

The extent to which Respondent has a right to exclude others from use of its mark on its goods.

RESPONSE:

INTERROGATORY NO. 9.

State the factual basis for Respondent's First Affirmative Defense: "Petitioner's action is barred by the doctrine of waiver or estoppel," according to the proof elements for the "waiver" and "estoppel" defenses (in *inter partes* proceedings before the Trademark Trial And Appeal Board, not trademark infringement actions).

RESPONSE:

INTERROGATORY NO. 10.

In reference to the "Second Affirmative Defense" asserting: "Petitioner's action is barred by the doctrine of laches or acquiescence," state according to the proof elements for the "laches" and "acquiescence" defenses (in *inter partes* proceedings before the Trademark Trial And Appeal Board, not trademark infringement actions) the factual bases for these defenses.

RESPONSE:

INTERROGATORY NO. 11.

In reference to the "Third Affirmative Defense" asserting: "Petitioner's action is barred because Petitioner acted with unclean hands," state according to the proof elements for the "unclean hands" defense (in *inter partes* proceedings before the Trademark Trial And Appeal Board, not trademark infringement actions) the factual bases for this defense.

RESPONSE:

INTERROGATORY NO. 12.

Identify the circumstances under which and the date on which Respondent became aware of Petitioner's Mark.

RESPONSE:

INTERROGATORY NO. 13.

Identify documents containing any advice of counsel upon which Respondent will rely to show good faith in its adoption and use of the "TOUCHSMART" mark.

RESPONSE:

INTERROGATORY NO. 14.

Identify any advertising agency engaged by Respondent to advertise and promote Respondent's goods under its "TOUCHSMART" mark, including the names, titles, and business addresses of the advertising agency employees having the most knowledge of such advertising and promotion.

RESPONSE:

INTERROGATORY NO. 15.

Identify each person who participated in the preparation of Respondent's responses to the foregoing interrogatories or furnished any information used in responding to each interrogatory, specifying the interrogatory response for which each such person participated in the preparation or contributed information.

RESPONSE:

INTERROGATORY NO. 16.

Identify by name, business address and contact data, each of the "partners" referred to in the following quotation from the 2008 Form 10-K of Hewlett Packard Company:

Sales, Marketing and Distribution

...

Our customers are organized by consumer and commercial customer groups, and distribution is organized by direct and channel. Within the channel, we have various types of **partners** that we utilize for various customer groups. The **partners** include:

- retailers that sell our products to the public through their own physical or Internet stores; resellers that sell our products and services, frequently with their own value-products or services, to targeted customer groups;
- distribution partners that supply our solutions to smaller resellers with which we do not have direct relationships;
- independent distributors that sell our products into geographies or customer segments in which we have little or no presence;
- original equipment manufacturers ("OEMs") that integrate our products with their own hardware or software and sell the integrated products;
- independent software vendors ("ISVs") that provide their clients with specialized software products, frequently driving sales of additional non-HP products and services, and often assist us in selling our products and services to clients purchasing their products; and
- systems integrators that provide various levels and kinds of expertise in designing and implementing custom IT solutions and often partner with HPS [HP Services] to extend their expertise or influence the sale of our products and services.

RESPONSE:

Respectfully submitted,

BROOKS KUSHMAN P.C.

By: 

ROBERT C.J. TUTTLE
HOPE V. SHOVEIN
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075

Attorneys for Petitioner

Dated: *August 27, 2009*

CERTIFICATE OF SERVICE

I certify that I served:

**PETITIONER'S FIRST SET OF
INTERROGATORIES TO RESPONDENT**

on August 27, 2009 by:

_____ delivering
X mailing (via First Class Mail)

a copy to:

Mr. Jeffrey E. Faucette
Ms. Diani D. DiGennaro
HOWARD, RICE, NEEROVSKI
CANADY, FALK & RANKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
jfaucette@howardrice.com
ddigennaro@howardrice.com

Attorneys for Respondent



Hope V. Shovein

EXHIBIT B

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

NARTRON CORPORATION

Petitioner,

v.

Cancellation No. 92050789

**HEWLETT-PACKARD
DEVELOPMENT COMPANY, L.P.,**

Respondent.

**PETITIONER'S FIRST SET OF
RULE 34 REQUESTS TO RESPONDENT**

Petitioner, Nartron Corporation, hereby requests Respondent, Hewlett-Packard Development Company, L.P., to produce for inspection and designation for copying documents and tangible things responsive to the items or categories described in the following numbered paragraphs at the offices of Petitioner's counsel, Brooks Kushman P.C., 1000 Town Center, Twenty-Second Floor, Southfield, Michigan 48075, within thirty (30) days from the date of service hereof, or at such other location and on such other date as may be agreed to by counsel.

DEFINITIONS AND INSTRUCTIONS

Applicant hereby incorporates by reference the definitions and instructions set forth in Petitioner's First Set of Interrogatories to Respondent.

DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1.

Documents substantiating Respondent's use of TOUCHSMART for *each* of the goods recited in U.S. Registration No. 3,600,880, as of the claimed date of first use, *i.e.*, January 29, 2007.

RESPONSE:

DOCUMENT REQUEST NO. 2.

Documents relating to any investigation of the availability for use of the mark TOUCHSMART for *each* of the goods recited in U.S. Registration No. 3,600,880, including searches, search reports, and the like.

RESPONSE:

DOCUMENT REQUEST NO. 3.

Documents relating or referring to any plans for marketing TOUCHSMART for *each* of the goods recited in U.S. Registration No. 3,600,880.

RESPONSE:

DOCUMENT REQUEST NO. 4.

Documents relating or referring to any survey, focus group, or similar form of market study concerning potential or actual use of TOUCHSMART by Respondent.

RESPONSE:

DOCUMENT REQUEST NO. 5.

Marketing and promotional materials (hard copy and electronic) showing actual use of TOUCHSMART by Respondent.

RESPONSE:

DOCUMENT REQUEST NO. 6.

Documents relevant to *duPont* Factor No. 1, viz:

The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.

RESPONSE:

DOCUMENT REQUEST NO. 7.

Documents relevant to *duPont* Factor No. 2, viz:

The similarity or dissimilarity in nature of the goods and services as described in an application or registration or in connection with which a prior mark is in use.

RESPONSE:

DOCUMENT REQUEST NO. 8.

Documents relevant to *duPont* Factor No. 3, viz:

The similarity or dissimilarity of established, likely-to-continue trade channels.

RESPONSE:

DOCUMENT REQUEST NO. 9.

Documents relevant to *duPont* Factor No. 6, viz:

The number and nature of similar marks in use on similar goods.

RESPONSE:

DOCUMENT REQUEST NO. 10.

Documents relevant to *duPont* Factor No. 11, viz:

The extent to which applicant has a right to exclude others from use of its mark on its goods.

RESPONSE:

DOCUMENT REQUEST NO. 11.

Documents substantiating Respondent's "First Affirmative Defense" of waiver or estoppel.

RESPONSE:

DOCUMENT REQUEST NO. 12.

Documents substantiating Respondent's "Second Affirmative Defense" of laches or acquiescence.

RESPONSE:

DOCUMENT REQUEST NO. 13.

Documents substantiating Respondent's "Third Affirmative Defense" of unclean hands.

RESPONSE:

DOCUMENT REQUEST NO. 14.

Documents recording any advice of counsel upon which Applicant will rely to show good faith in its adoption and use of the TOUCHSMART mark.

RESPONSE:

DOCUMENT REQUEST NO. 15.

Documents sufficient to identify by name, business address and contact data, each of the "partners" referred to in the following quotation from the 2008 Form 10-K of Hewlett Packard Company:

Sales, Marketing and Distribution

...

Our customers are organized by consumer and commercial customer groups, and distribution is organized by direct and channel. Within the channel, we have various types of **partners** that we utilize for various customer groups. The **partners** include:

- retailers that sell our products to the public through their own physical or Internet stores; resellers that sell our products and services, frequently with their own value-products or services, to targeted customer groups;
- distribution partners that supply our solutions to smaller

resellers with which we do not have direct relationships;

- independent distributors that sell our products into geographies or customer segments in which we have little or no presence;
- original equipment manufacturers ("OEMs") that integrate our products with their own hardware or software and sell the integrated products;
- independent software vendors ("ISVs") that provide their clients with specialized software products, frequently driving sales of additional non-HP products and services, and often assist us in selling our products and services to clients purchasing their products; and
- systems integrators that provide various levels and kinds of expertise in designing and implementing custom IT solutions and often partner with HPS [HP Services] to extend their expertise or influence the sale of our products and services.

RESPONSE:

DOCUMENT REQUEST NO. 16.

All documents not otherwise listed in answer to the interrogatories and document requests, which were referred to or relied upon to prepare the answers to the interrogatories and document requests.

RESPONSE:

Respectfully submitted,

BROOKS KUSHMAN P.C.

By: 

ROBERT C.J. TUTTLE
HOPE V. SHOVEIN
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075

Attorneys for Petitioner

Dated: *August 27, 2009*

CERTIFICATE OF SERVICE

I certify that I served:

**PETITIONER'S FIRST SET OF
RULE 34 REQUESTS TO RESPONDENT**

on August 27, 2009 by:

_____ delivering
 X mailing (via First Class Mail)

a copy to:

Mr. Jeffrey E. Faucette
Ms. Diani D. DiGennaro
HOWARD, RICE, NEEROVSKI
CANADY, FALK & RANKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111
jfaucette@howardrice.com
ddigennaro@howardrice.com

Attorneys for Respondent



Hope V. Shovein